

SPECIAL CIVIL APPLICATION No 9311 of 1997

Hon'ble MR.JUSTICE R.K.ABICHANDANI and Sd/-
MR.JUSTICE A.R.DAVE Sd/-

JJJ

2. To be referred to the Reporter or not? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

No

Versus

Appearance:

MR RD PATHAK for Petitioners
MR KAMAL MEHTA AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2 & 3
MR MG DOSHIT for Respondent No. 4

Date of decision: 01/09/98

(Per R.K.Abichandani, J.)

The petitioners seek direction on the respondents authorities to grant fresh eligibility certificate so as to enable the petitioners to obtain the Sales Tax Incentive for the full period of five years from 19.8.1993 to 18.8.1998 subject to the maximum limit of Rs.6,78,750/-.

2. Earlier, the petitioners had approached this Court by way of Special Civil Application No.6207 of 1995 against the order dated 6.6.1995 passed by the District Industries Centre, Valsad by which the petitioner Company was informed that, as they had not filed the application within the prescribed period, the eligibility certificate which was granted on 9.6.1994 was cancelled with immediate effect. According to the petitioners, the petitioner No.1 ought to have been heard before cancelling the said certificate. A Division Bench of this court, by its order dated 13.9.1995 observing that, before cancelling the certificate no notice was issued to the petitioner No.1 and no opportunity of being heard was afforded, set aside the order dated 6.6.1995 with a further observation that, it would be open for the appropriate authority to take action in accordance with law by following the principles of natural justice. Thereafter, on 22.2.1996, the petitioner company addressed a detailed representation to the Industries Commissioner in the context of the order made by this Court in Special Civil Application No.6207 of 1995 claiming that the petitioner company was entitled to deferment benefit as per the eligibility certificate earlier granted. In the affidavit-in-reply filed by the respondent authority it has been stated that the petitioners were given an opportunity of being heard, as per the direction of the High Court, by its communication requiring the petitioners to remain present on 8.1.1996 but an adjournment was sought. Thereafter, further date was given for personal hearing which was scheduled on 29.1.1996 but, again, the petitioners did not personally attend. Again, they were given time and asked to remain present on 24.4.1996 to discuss the matter and the petitioners remained present on that day and discussed the matter as stated in paragraph 11 of the affidavit-in-reply. It, therefore, appears that the petitioners have been given an opportunity of being heard pursuant to the direction of this court in their earlier petition.

3. Admittedly, the petitioner No.1 had made an application to the respondent No.2 for grant of an eligibility certificate for the purpose of Sales Tax Deferment Incentive Scheme on 19.8.1993. The respondent

No.2 intimated to the petitioner vide his letter dated 6.9.1993 that the application was made beyond the prescribed time-limit. By communication dated 2.11.1993, the petitioner was informed that his application for Sales Tax Deferment was rejected because the causes of delay had not been accepted. However, thereafter, the petitioners approached the Assistant Industries Commissioner by an application dated 12.3.1994 for reconsideration of the decision by which the application was rejected on the ground of delay, and requested for grant of eligibility certificate for Sales Tax Deferment. It appears that, thereafter, the Respondent No.2 had granted on 9.6.1994 the eligibility certificate to the petitioner company for Sales Tax Deferment Incentive for the maximum limit of Rs.6,78,750/-, for the time-limit commencing from 19.8.1993 and ending on 30.6.1996. Admittedly, the industrial unit had made the application late by 2 years 4 months and 19 days beyond the time prescribed for making the application and, therefore, at that time, the period of delay was excluded. Thereafter, on 6.6.1995, the petitioner company was informed that, it was noticed on checking the file of the petitioner's unit that in the case of expansion, the delay in making the application had not been condoned and, as the Sales Tax Incentive was not admissible, the eligibility certificate was cancelled with immediate effect. That is the order which was earlier challenged in Special Civil Application No.6207 of 1995 and was set aside on the ground that it was made in violation of the principles of natural justice, since no hearing was given before making of that order.

4. As noted above, after the decision of the High Court, the petitioners made a detailed application dated 22.9.1996 and, thereafter, the order dated 28.10.1997 has been made by the respondent No.1 by which the deferment limit in the eligibility certificate was reduced from Rs.6,78,750/- to Rs.3,54,800/-. The result was that, instead of cancelling the eligibility certificate, it was modified to the aforesaid extent. It will be noted from the said order dated 28.10.1997, which is at Annexure-A/6, that the concerned authority had made a note to the effect that the unit had made the application late by 2 years 4 months and 19 days. This period was deducted from the eligible period and, from the total eligible amount of Sales Tax Deferment of Rs.6,78,750/-, pro rata deduction was made and the eligible quantum of Sales Tax Deferment was determined at Rs.3,54,800/-, according to the provisions of the Resolution dated 14.3.1996, which was referred to at serial No.1 at the outset of this amendment order.

5. The learned Counsel appearing for the petitioners contended that the Resolution dated 14.3.1996 , on which reliance was sought to be placed, could not have been invoked by the authority because it came into existence much after the eligibility certificate was granted and even later than decision of the High Court in the earlier petition which was rendered on 13.9.1995. It was also contended that, prior to this Resolution, there was no provision for making deduction in the total amount of eligibility.

6. Admittedly, the petitioner company had made its application beyond the prescribed period of 180 days, which was earlier 90 days. As recorded in the orders, the application was late by 2 years 4 months and 19 months. As recorded in the earlier decision of this Court, the petitioner company started production from 31.3.1991 but made the application on 19.8.1993. That application was initially rejected on 27.10.1993, as noted earlier. In respect of the Incentive Scheme, which is covered by the Resolution dated 6.5.1986 under which the petitioners claimed the benefit, the time-limit for submission of an application has been provided in the Resolution dated 13.11.1987 which refers to the said Resolution dated 6.5.1986 under which the relevant Scheme was provided for. This Resolution dated 13.11.1987 also applies to other Schemes which are mentioned therein. The period of 90 days was provided for the applications under the Sales Tax Incentive Scheme for industries covered by the Resolution dated 6.5.1986, which later was raised to 180 days by the Government Resolution dated 3.6.1988. It is mentioned at the end of the Resolution that the eligible unit shall approach the competent authority for sanction of Sale Tax Incentive within the time-limit/ last date prescribed as stated in the Resolution. It is then stated: "Thereafter, the claim for Sales Tax Incentive under the Scheme will not be entertained." This clearly means that there was absolutely no scope left for condoning delay if the application was made beyond the time-limit/ last date prescribed. It appears that representations were made due to hardships caused due to the rigidity of this Resolution and that led to the passing of the subsequent Resolution by which it was provided that delay would be condoned on certain conditions. We are concerned in this matter with that Resolution dated 14.3.1996, which is at Annexure-C to the affidavit-in-reply filed by the respondent. That Resolution inter-alia recites that under the existing orders, any claim for Sales Tax Incentive received after the prescribed period of 180

days, was not to be entertained. It takes note of a large number of representations which were received from the industries requesting for condonation of delay. Then, it records the decision of the Government to the effect that, it had decided to condone the delay after the prescribed period of 180 days in the 1986-91 policy subject to the conditions which are reproduced hereinbelow:

"1. The period of delay will be deducted from the period that the unit is entitled to avail of the benefit as per the 1986-91 policy.

2. Proportionately the eligible amount of Sales Tax benefit will also be reduced. For example, if the original period of eligibility was 5 years and the period of delay is one year, then the quantum of sales tax benefit will be deducted by 20%. Individual cases will have to be scrutinized and determined on this basis."

It is clear from this Resolution that, not only the period of delay was required to be deducted from the total period, but, proportionately the eligible amount of sales tax benefit was also required to be reduced. In our view, this was a reasonable provision and it has not violated any rights of the petitioner. The petitioner, who otherwise would have been totally ineligible because of there being no provision for condonation of delay under the earlier orders, became entitled to proportionate benefits after deduction of the period of delay and the quantum relatable to such delayed period. The amended certificate now given by the order dated 28.10.1997 is, therefore, issued in accordance with uniform policy which is reflected from the said Resolution and the petitioner cannot claim any exception to it by claiming full benefit on the footing that there was no delay. There is, therefore, no substance in this petition, and it is hereby rejected. Notice is discharged with no order as to costs.

Sd/-

(KMG Thilake)

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